



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100

BOSTON, MA 02109-3912

MAR 24 2016

Robert Moore, CEO
82 Running Hill Road
South Portland, ME 04106

Certified Mail
Return Receipt Requested

Beau M. Rocheleau
Dead River Company
159 Elm St.
Manchester, NH 03103

Re: Request for Information, Docket No. CWA-308-R01-FY16-58
SPCC Inspection of Dead River Company – Manchester Facility on 5/13/2015

Dear Mr. Moore and Mr. Rocheleau,

Our records show that the Dead River Company, located in Manchester, NH (the "Facility"), was inspected by a representative of the U.S. Environmental Protection Agency ("EPA") on May 13, 2015. Based on information provided at that time, the inspector noted that this Facility did have a Spill Prevention, Control, and Countermeasure ("SPCC") Plan, as required by the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112, promulgated under Section 311 of the Clean Water Act, 33 U.S.C. § 1321. However, the SPCC Plan and implementation of the plan was inadequate as the facility failed to:

- provide a complete Facility Diagram;
- include a description of several bulk oil storage tanks;
- adequately describe secondary containment for bulk storage containers; and
- complete or maintain facility inspection records.

This was communicated to your staff by the inspector at an out-brief session on the day of the inspection and to you in post-inspection communications.

Under the authority of Sections 308 and 311(m) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1321(m), you are hereby required to submit to EPA within 30 calendar days of your receipt of this letter answers to the questions provided in Attachment 1.

Answers to the questions shall be sent to:

Alex Sherrin
On-Scene Coordinator
U.S. Environmental Protection Agency, Region 1
5 Post Office Sq., Suite 100
Mail Code OSRR-02
Boston, MA 02109-3912

Please be advised that noncompliance with the Oil Pollution Prevention regulations constitutes a violation of the Clean Water Act for which both injunctive relief and penalties can be sought.

EPA reserves its right to take further enforcement action pursuant to the Clean Water Act, and other applicable laws, including the right to seek penalties, for any violations detected at the above-referenced inspection. Although preparation and/or revision and submittal of an SPCC Plan to EPA does not preclude EPA from seeking penalties for violations of the Clean Water Act, your prompt response towards coming into full compliance with the Oil Pollution Prevention Regulations will be taken into account in determining EPA's enforcement response.

Although this letter's emphasis is on compliance with the Oil Pollution Prevention Regulations, your facility may also be subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act. If you are required to have Material Safety Data Sheets for your facility and store 10,000 lbs or more of oil, then you may be required under Section 312(a) of EPCRA to prepare and submit an emergency and hazardous chemical inventory form to the Local Emergency Planning Committee, the State Emergency Response Commission and the local fire department. More information can be found at <http://www2.epa.gov/epcra>. EPA does not waive its right to take additional enforcement action for any violation of EPCRA or of any other federal statute or regulations.

Please be further advised that compliance with this information request is mandatory. Failure to respond fully and truthfully, or to adequately justify any failure to respond, within the time frame specified above, also constitutes a violation of the Clean Water Act subject to enforcement action, including the assessment of civil penalties. In addition, providing false, fictitious, or fraudulent statements or representations may subject you to criminal prosecution under 18 U.S.C. § 1001. If information or documents not known or available to you as of the date of submission of your response to this request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find at any time after the submission of the response that any portion of the submitted information is false or misrepresents the truth, you must notify EPA of this fact as soon as possible, and provide a corrected response.

You may, if you desire, assert a business confidentiality claim covering part or all of the information requested in the manner described by 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public without further notice to you.

Enclosed with this information request letter is an information sheet intended to assist small businesses, as defined by the Small Business Administration ("SBA") at 13 C.F.R. Part 121.201, in understanding and complying with environmental regulations. EPA New England is routinely providing this information to businesses in the course of its enforcement activities, whether or not they are small businesses as defined by the SBA. The Small Business Regulatory Enforcement and Fairness Act provides small businesses with the opportunity to submit comments on regulatory enforcement at the time of an agency enforcement activity. The enclosed Information Sheet provides information on this right, as well as information on compliance assistance that may be available to you. The Small Business Ombudsman may be reached at 1-800-368-5888. Please be aware that availing yourself of this opportunity does not relieve Dead River Company of its responsibility to comply with federal law and this information request.

Your response to this Request must be accompanied by the certificate that is signed and dated by the person who is authorized to respond to the Request on behalf of the company. The certification must state that your response is complete and contains all information and documentation available to you that is responsive to the Request. A Statement of Certification is enclosed with this letter at Attachment 2.

If you have any questions concerning your compliance with this letter, please contact Alex Sherrin, On-Scene Coordinator, directly at (617) 918-1252, or have your attorney contact Jeffrey Kopf, EPA's attorney in this matter, at (617) 918-1796. For your information, EPA has on its website (www.epa.gov/oilspill) a general guidance document on SPCC Plan preparation, including a model SPCC Plan.

Sincerely,



James Chow, Manager
Technical Enforcement Office
Office of Environmental Stewardship

Enclosures

cc: National Corp. Research, Ltd., Registered Agent, 63 Pleasant St., Concord, NH 03301)
Jeffrey Kopf, Senior Enforcement Counsel, EPA Region 1 (electronically)
Alex Sherrin, On-Scene Coordinator, EPA Region 1 (electronically)
Joseph Canzano, Spill Prevention Compliance Coordinator, EPA Region 1 (electronically)
Matt Jones, NH DES (electronically at Matthew.Jones@des.nh.gov)

Attachment No. 1

1. Provide a statement detailing the actions taken by your Facility to correct the deficiencies specified in the enclosed inspection report; and
2. If, in order to correct the deficiencies, your Facility must revise your existing SPCC Plan, submit a copy of such new or revised SPCC Plan. If completion of the SPCC Plan is not feasible within 30 calendar days, submit a detailed schedule of when it will be completed and fully implemented. The schedule should include the name, address, license number, and state of licensure of the registered professional engineer certifying the SPCC Plan. If the SPCC Plan calls for the construction of secondary containment at the Facility, the schedule should include construction milestone dates.
3. If you have determined that your Facility is no longer subject to the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112, and is therefore not required to have an SPCC Plan, provide an explanation supporting such determination, including appropriate documentation.
5. Provide the date the Facility first started having the capacity to store oil above the SPCC regulatory thresholds set forth in 40 C.F.R. § 112.1(d)(1) (i.e., the SPCC-regulated underground oil storage capacity of the Facility is greater than 42,000 gallons -or- the aboveground oil storage capacity of the Facility is greater than 1,320 gallons).
6. Provide the date the Facility first began operation and, if different, the date the current owner took over ownership of the Facility. If the Facility is operated by an entity other than the owner, also include the date the current operator took over operation of the Facility.
7. Provide a list of additional facilities owned by the owner of the inspected Facility, including the name, location, and total number of employees at each facility. If the inspected Facility is operated by an entity other than the owner, provide a list of additional facilities operated by the operator of the inspected Facility, including the name, location, and total number of employees at each facility. For each additional facility listed, please provide the following information:
 - a. Provide the aggregate shell capacity of all aboveground oil tanks and containers equal to or greater than 55 gallons in size at each facility;
 - b. Explain whether each additional facility is subject to the Oil Pollution Prevention Regulations (40 C.F.R. Part 112);
 - c. For those facilities that are subject to the Oil Pollution Prevention regulations, indicate whether the facility has a written, Professional Engineer-certified SPCC Plan or a written, self-certified SPCC Plan, and whether the SPCC Plan is being fully implemented at the facility; and

- d. For facilities that are required to have an SPCC Plan but either do not have one or are not fully implementing their SPCC Plan, provide a time frame for when each facility is expected to be in compliance with the Oil Pollution Prevention Regulations.
8. If the Facility is developing an updated SPCC Plan post-inspection, please also include the following information:
- a. The cost of preparing the new SPCC Plan;
 - b. The cost of implementing the new SPCC Plan (including the cost of constructing additional secondary containment at the Facility); and
 - c. The ongoing annual costs of implementing the new SPCC Plan, over and above the annual costs of the old SPCC Plan (including training, inspections and record keeping).
9. This question pertains to your Facility's compliance with the Emergency Planning and Community Right-to-Know Act:
- a. Describe whether the Facility is required to have available a Material Safety Data Sheet ("MSDS") for any "hazardous chemical" present at the Facility, pursuant to the Occupational Safety and Health Act ("OSHA") of 1970.¹
 - b. If the Facility was required to have available a MSDS for any chemicals at the Facility, describe whether the maximum amount of each of those chemicals in any of the past five calendar years exceed the minimum threshold of 10,000 pounds. If any chemical is considered an "extremely hazardous substance," a lower threshold amount would be applicable to that chemical, pursuant to 40 C.F.R. Part 355, Appendices A and B. Please provide both the maximum daily quantity and average quantity of each chemical that exceeded the applicable minimum threshold level in any of the past five calendar years.
 - c. If your Facility was required to have available a MSDS for any hazardous chemical and one or more chemicals exceeded the minimum threshold level set forth in 40 C.F.R. Part 355, explain whether you have submitted an inventory form (Tier II) including those chemicals to the State Emergency Response Commission, the Local Emergency Planning Committee, and the local fire department. If you have provided such forms, please provide copies of the Tier II forms filed since January 1, 2012. If you have not, please state the reason why no Tier II forms were filed.

¹ MSDS requirements are specified in the OSHA Hazard Communication Standard ("HCS") found in 29 C.F.R. § 1910.1200. "Oil" is considered a hazardous chemical.

Attachment No. 2

Statement of Certification

I declare, under penalty of perjury, that I am authorized to respond on behalf of the Dead River Company. I certify that the foregoing responses and information submitted were prepared under my direction or supervision, and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By _____
(Signature)

(Printed Name)

(Title)

(Date)